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**From:** Locatelli, Amanda <Amanda.Locatelli@nre.tas.gov.au>  
**Sent:** Tuesday, 27 February 2024 4:30 PM  
**To:** TPC Enquiry  
**Cc:** O'Brien, Lauren; Cleary, Chris (DPIPWE)  
**Subject:** Attention Robin Nolan (Chair) and Lauren O'Brien – TPC Review - Mersey River Catchment Water Management Plan 2023 – Information on Notice NRE Tas

Dear Mr Robin Nolan (Chair),

The Department of Natural Resources and Environment Tasmania offered to provide further information on Notice to the Tasmanian Planning Commission Public Hearing on the Review of the Mersey Water Management Plan that was held on 22<sup>nd</sup> February 2024 at Sheffield. Two further pieces of information (numbered 1 -2) are provided as follows:

**1. Impact of Cement Australia Operations on Flows in Redwater Creek and at Shale Road Flow Guage**

Refer: NRE Tas, 2022, *Mersey River Catchment Water Resource Information – Review and Amendment of the Mersey River Catchment Water Management Plan*.

In addition to concluding paragraph on Page 152 that was referenced at the Hearing, **also refer to p.151, second paragraph, as follows:**

*“Therefore, given groundwater inflows to the Old Pit were very low, and that ‘dewatering’ operation never discharged groundwater to Redwater Creek, it is reasonable to conclude that the dewatering operations of the Old Pit had no effect on gauged flows in the Mersey River measured at the Shale Road gauge.”*

**2. Legislation related to priorities for water access related to environment taking precedence over lower priority uses**

The *Draft Amended Mersey River Catchment Water Management Plan 2023* has been developed in accordance with Part 4 of the *Water Management Act 1999* (the Act) and provides important information to support applying restrictions (under restriction notices) consistent with Part 6 – Div. 3 of the Act by defining:

- **Provision 4.3 – Water Allocation Limits** (for Surety 5 and 6 allocations in relevant take periods);
- **Provision 4.1 – Priorities for water access** – Draft Plan defines surety levels
- **Provision 4.4.2 – Monthly cease-to-take thresholds** to maintain flows for higher surety uses including the environment (Surety 2) and essential water uses (Surety 1).

Several parts of the Act contain requirements related to how the Minister (and/or delegate) is required to consider the needs of the environment and manage access in order of priority when making decisions under the WMA and when applying restrictions when there is not enough flow available to meet all demand. Key relevant Parts, Divisions and Sections of the Act, are quoted below and those parts specifically related to considering and prioritising the needs of the ecosystem are highlighted yellow.

## **“PART 2 – Objectives of Act**

### **6. Objectives of Act**

*(1) The objectives of this Act are to further the objectives of the resource management and planning system of Tasmania as specified in [Schedule 1](#) and in particular to provide for the use and management of the freshwater resources of Tasmania having regard to the need to –*

*(a) promote sustainable use and facilitate economic development of water resources; and*

*(b) recognise and foster the significant social and economic benefits resulting from the sustainable use and development of water resources for the generation of hydro-electricity and for the supply of water for human consumption and commercial activities dependent on water; and*

*(c) maintain ecological processes and genetic diversity for aquatic and riparian ecosystems; and*

*(d) provide for the fair, orderly and efficient allocation of water resources to meet the community's needs; and*

*(e) increase the community's understanding of aquatic ecosystems and the need to use and manage water in a sustainable and cost-efficient manner; and*

*(f) encourage community involvement in water resource management.”*

## **“PART 3 – Administration**

### **8 Functions and duties of the Minister**

*“(1) The functions and duties of the Minister under this Act are –*

*(a) to manage the water resources of Tasmania in accordance with the objectives of this Act; and...*”

*“(2) When making a decision under this Act that is based wholly or partly on an assessment of the quantity of water available or the period or periods during which water is available from a water resource, the Minister must take into account –*

*(a) the needs of the major ecosystems that depend on that water resource for water; and*

*(b) any effect that the decision may have on the commercial operations of major users of water from that water resource.”*

#### ***“Part 4 - Water Management Plans Division 1 - Nature of water management plans***

##### ***14. Scope of water management plans***

*(2) A water management plan is to include –*

*(a) a statement of the objectives of the plan, including the environmental objectives; and*

*(b) a description of the water regime that best gives effect to the environmental objectives and other relevant objectives of the plan; and*

*(c) an assessment of the ability of that water regime to achieve the environmental objectives and other relevant objectives of the plan; and*

*(d) an assessment of likely detrimental effects of the plan on the quality of water.”*

#### ***“PART 6 - Licensing and Allocation of Water Division 3 - Restrictions in case of inadequate water***

##### ***91. Inadequate supply or overuse of water***

*(1) This Division applies in the following circumstances:*

*(a) if the rate at which water is taken from a watercourse, lake, groundwater area or well –*

*(i) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand; or*

*(ii) is adversely affecting, or is likely to adversely affect, the quality of the water in the watercourse, lake, groundwater area or well; or*

*(iii) is having a serious effect on another watercourse, lake or groundwater area that depends on water from the first-mentioned watercourse, lake or groundwater area for replenishment;*

*(b) if the rate at which water is taken from a well or groundwater area is such that an underground aquifer is likely to collapse or suffer any other damage;*

*(c) if the rate at which dispersed surface water is taken –*

*(i) is such that the dispersed surface water available can no longer meet the demand; or*

*(ii) is having a serious effect on a watercourse or lake, or the level of water in an underground aquifer, that depends on the dispersed surface water for replenishment;*

*(d) if the rate at which, or the manner in which, water is taken from a water resource is causing, or is likely to cause, damage to ecosystems that depend on water from the water resource.*

*(2) In determining the demands on available water for the purposes of [subsection \(1\)](#), the need for water on the part of the ecosystems that depend on water from the water resource concerned must be taken into account.*

## **92. Notice of water restrictions**

*(1) Where a circumstance mentioned in [section 91](#) occurs, the Minister may, by notice published in a local newspaper or by notice served personally or by post on a person, prohibit or restrict the taking of water from a water resource.*

*(2) The notice –*

*(a) takes effect at a time that is specified in the notice for that purpose; and*

*(b) remains in force for such period not exceeding 12 months as is specified in the notice unless it is revoked under [section 94\(4\)](#) .*

*(3) If a case of urgent necessity arises from a circumstance mentioned in [section 91](#) , a notice under [subsection \(1\)](#) may be given by radio, television or telephone but a further notice must then be given in accordance with that subsection as soon as practicable.*

*(4) A person who contravenes a notice under this section is guilty of an offence. Penalty: For breach of this subsection, fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.*

### **93. Form of water restrictions**

*A notice under [section 92\(1\)](#) may, without limitation –*

*(a) require the removal or modification of the means by which water can be taken from a watercourse, lake or well; or*

*(b) specify conditions subject to which water may be taken from a watercourse, lake or well; or*

*(c) specify any action to be taken to remove or reduce the damage or the risk of damage mentioned in [section 91\(1\)\(d\)](#) .*

### **94. Restrictions on taking of water**

*(1) Where a notice under [section 92\(1\)](#) reduces or restricts the quantity of water that may be taken by a person, the Minister must reduce or restrict that taking –*

*(a) in accordance with any relevant water management plan; and*

*(b) in the case of water being taken under a special licence, only after –*

*(i) consulting with the special licensee; and*

*(ii) taking into account any submissions made by the special licensee; and*

*(iii) first reducing the taking of water by persons having rights of lesser surety than that of the special licence.*

*(2) Except as may be otherwise provided by a relevant water management plan, the Minister must, in reducing or restricting the taking of water –*

*(a) give first preference to –*

- (i) rights under [Part 5](#) for the taking of water for domestic purposes, public health purposes, consumption by livestock or firefighting; and*
  - (ii) rights of licensees for the taking of water for domestic purposes or for consumption by livestock where the licence is endorsed with a condition that this subsection applies to the licence; and*
  - (iii) the rights mentioned in [clause 12\(4\)\(a\)](#) of [Schedule 4](#) ; and*
  - (iv) other allocations, where the surety attaching to those allocations in accordance with [section 59](#) is of the highest class; and*
  - (b) give second preference to the needs of ecosystems dependent on the water resource; and*
  - (c) give third preference to rights of licensees granted a licence by way of replacement under [clause 10](#) of [Schedule 4](#) ; and*
  - (d) give fourth preference to rights of special licensees; and*
  - (e) give fifth preference to rights under [Part 5](#) for the taking of water otherwise than for domestic purposes, consumption by livestock or firefighting; and*
  - (f) reduce or restrict the taking of water under authorisations that are not referred to in [paragraph \(a\)](#) , [\(b\)](#) , [\(c\)](#) , [\(d\)](#) or [\(e\)](#) , having regard to the relative sureties of the water allocations of any relevant licences and the purposes for which the water is taken.*
- (3) If the owner or occupier of land contravenes a requirement of a notice under [section 92](#) –*
- (a) the Minister may authorise a person to enter on the land and take the action specified in the notice and such other action as the Minister may require for the purposes of this Act; and*
  - (b) the Minister's costs actually and reasonably incurred in so doing are a debt due by the owner or occupier to the Minister.*
- (4) Where a notice has been published under [section 92](#) , the Minister may vary or revoke the notice by another notice published in a local newspaper.*
- (5) Where the Minister has served notice on a person under [section 92](#) , the Minister may vary or revoke the notice by a subsequent notice served on that person.”*

Kind regards

Amanda Locatelli



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## Delivering a sustainable Tasmania



*In recognition of the deep history and culture of this island, I acknowledge and pay my respects to all Tasmanian Aboriginal people; the past and present custodians of the land.*

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